

IN AND FOR NEW CASTLE COUNTY

Respondent.

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C.A. No. 91A-12-14

Decided: August 31, 1992

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ORDER

This 28th day of August, 1992, upon consideration of the memoranda of counsel and the record in this case, it appears that:

1. This is a civil action wherein Capital Educational Secretaries Association ("the Association"), seeks review by certiorari of a decision of the Public Employment Relations Board ("the Board") pursuant to its authority under Section 4006 of the Public School Employment Relations Act ("the Act"), 14 Del. C. Ch. 40. The Association is a "bargaining unit" representing employees for purposes of collective bargaining. 14 Del. C. § 4002(a).

The Board was required to determine whether the Senior Secretaries assigned to Building Principals in the Capital School District were "confidential employees" within the meaning of § 4002(f) of the Act and, therefore, statutorily excluded from the Association under § 4002(m). The Board ruled that they were confidential employees. There is no right of appeal from the Board's decision.

2. A writ of certiorari is issued as a matter of right. 10 Del. C. § 562. The Court's function is to correct errors of law, to review proceedings not carried out in accord with the law, and to restrain an excess in jurisdiction. *In the matter of the petition of Charles E. Butler, Deputy Attorney General, For a Writ of Certiorari*, Del. Supr., ___ A.2d ___, (1992); *Spencer v. Smyrna Bd. of Educ.*, Del. Super., 547 A.2d 614, 616 (1988); *See also Schwander v. Feeney's*, Del. Super., 29 A.2d 369, 371 (1942); and *Jardel v. Carroll*, Del. Super., C. A. No. 86C-MY5, Ridgely, J. (Jan. 26, 1990). In the instant case, there is no contention that the proceedings below were "irregular" or otherwise less than full and fair. There is also no doubt that the Board was acting within its jurisdiction. Thus, the sole issue remaining is whether the Board's decision to classify these individuals as confidential employees was "without compliance

with requirements of law", i.e., was an error of statutory construction.

3. The Association does not dispute the factual findings made by the Executive Director in the opinion dated October 10, 1991, which was appealed to the Board. The Board, in turn, adopted the factual findings of the Executive Director. However, the Board disagreed with the Executive Director's rulings of law in two specific areas. Those legal rulings form the basis for the writ of certiorari which now brings the matter before this Court.

4. The Association contends that the Board erred as a matter of law in two respects. First, that it erroneously interpreted the nature of the duties and contact with confidential information necessary to become a confidential employee and secondly, that it applied too broad a meaning to the words "collective bargaining process."

5. A confidential employee is defined by statute as:

"[A]ny employee whose functional responsibilities or knowledge in connection with the issues involved in the collective bargaining process would make membership in an appropriate unit incompatible with the employee's official duties." 14 Del. C. § 4002(f).

6. The Board followed a line of cases from New Jersey which has a very similar definition of confidential employees,¹ and rejected the interpretation of the Executive Director

¹Under the New Jersey statute, confidential employees are defined as those:

"... employees whose functional responsibilities or knowledge in connection with the issues in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

who ruled that the test of confidentiality required "(1) either functional responsibilities or knowledge (rather than simply access), (2) which is in connection with the issues involved in the collective bargaining process (3) to the extent that this knowledge or responsibilities could reasonably cause a conflict with the employee's official duties."

The Board rejected the Executive Director's analysis which required more than mere access to information and put a burden on the employer to shield the employee from confidential materials. The Board adopted the New Jersey approach wherein the words confidential employee have been construed broadly to find employees ineligible for bargaining units even though they had no regular involvement in labor relations activities. *See River Dell Regional Board of Education*, NJPER § 14084 (NJPERC 1983); *Township of Scotch Pines*, 9NJPER § 14270 (NJPERC 1983); *In re Township of Dover*, D.R. No. 79-19 5 NJPER 61 (§ 10040 1979). The Board concluded that the definition does not require the School District to avoid assigning work that may be confidential to employees who would otherwise perform the work, nor does it require the District to withhold certain information from employees because they are part of the bargaining unit.

7. The Board also followed New Jersey cases with regard to the meaning of the words "collective bargaining process". The definition utilized by the Executive Director was narrow, interpreting the words to mean only those communications actually related to the labor negotiations. The Board noted that the New Jersey statute uses the words "collective negotiations process" which it construed to be narrower than the common meaning of the words "collective bargaining process." The Board noted that the New Jersey statute has been construed

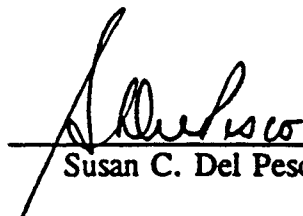
to include "the labor relations function of the public employer." *Township of Scotch Plains*, 9 NJPER § 14270 (NJPERC 1983).

The Board cited with approval *Oakland Board of Education* which held that:

The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and the preparation for these processes . . . Employees in clerical positions are often deemed confidential due to their boss' role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. *Oakland Board of Education*, 16 NJPERC § 21220 (NJPERC 1990).

8. Giving recognition to the expertise of the Board, *Seaford Board of Education and Seaford School District v. Seaford Education Association*, Del. Ch., C.A. 9491, Allen, C., (Feb. 5, 1988), I conclude that the Board's interpretation of the term "confidential employee" is legally correct. The Board's decision is AFFIRMED.

IT IS SO ORDERED.



Susan C. Del Pesco, Judge

Original to Prothonotary

xc: Counsel of Record
Public Employment Relations Board